

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DESHAWN RICARDO BROWN,)
)
Petitioner,)
)
vs.) Case No. CIV-05-568-F
)
JOHN WHETSEL, Sheriff,)
)
Respondent.)

O R D E R

On June 1, 2005, United States Magistrate Judge Gary M. Purcell issued a Report and Recommendation, wherein he recommended that petitioner Deshawn Ricardo Brown's motion to reduce or correct sentence pursuant to Rule 35, Federal Rules of Criminal Procedure, construed as a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, be dismissed without prejudice to refiling. Magistrate Judge Purcell specifically found that the petition should be dismissed on the basis of abstention and failure to exhaust state court remedies.

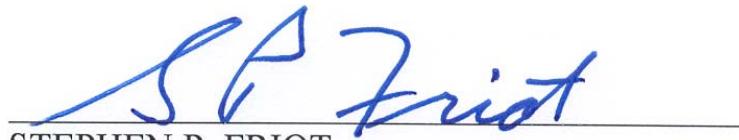
Magistrate Judge Purcell advised petitioner of his right to file an objection to the Report and Recommendation by June 21, 2005, and that failure to make timely objection waived his right to appellate review of both factual and legal issues therein contained. To date, petitioner has not filed an objection to the Report and Recommendation and has not requested an extension of time to file an objection.

With no objection being filed, the court accepts, adopts and affirms the Report and Recommendation in its entirety.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Gary M. Purcell on June 1, 2005 (docket entry no. 6) is **ACCEPTED, ADOPTED and AFFIRMED.**

Petitioner Deshawn Ricardo Brown's motion to reduce or correct sentence pursuant to Rule 35, Federal Rules of Criminal Procedure, construed as a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, filed May 20, 2005(docket entry no. 1), is **DISMISSED** without prejudice to refiling. Judgment shall issue forthwith.

Entered this 6th day of July, 2005.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

05-0568p002(pub).wpd